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SAGER ELECTRICAL SUPPLY COMPANY, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

**SAGER ELECTRICAL SUPPLY
COMPANY, INC., a Massachusetts
corporation,**

Plaintiff,

vs.

NORIBACHI CORPORATION, a Delaware corporation; LUMINATION LIGHTING AND TECHNOLOGY, INC., a California corporation; HCAP PARTNERS III, L.P., a Delaware limited partnership; FRANCISCO PALOP, an individual; KURT NOYES, an individual; and DOES 1 to 100, inclusive.

Defendants.

CASE NO. 2:18-cv-08291-R-FFM
**STIPULATED PROTECTIVE
ORDER**

1. A. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this

1 Order does not confer blanket protections on all disclosures or responses to
2 discovery and that the protection it affords from public disclosure and use extends
3 only to the limited information or items that are entitled to confidential treatment
4 under the applicable legal principles. The parties further acknowledge that this
5 Stipulated Protective Order does not entitle them to file confidential information
6 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed
7 and the standards that will be applied when a party seeks permission from the court
8 to file material under seal.

9 **B. GOOD CAUSE STATEMENT**

10 This action is likely to involve trade secrets, customer and pricing lists and
11 other valuable research, development, commercial, financial, technical and/or
12 proprietary information for which special protection from public disclosure and
13 from use for any purpose other than prosecution of this action is warranted. Such
14 confidential and proprietary materials and information consist of, among other
15 things, confidential business or financial information, information regarding
16 confidential business practices, and technical documentation, or other confidential
17 research, development, or commercial information (including information
18 implicating privacy rights of third parties), information otherwise generally
19 unavailable to the public, or which may be privileged or otherwise protected from
20 disclosure under state or federal statutes, court rules, case decisions, or common
21 law. Accordingly, to expedite the flow of information, to facilitate the prompt
22 resolution of disputes over confidentiality of discovery materials, to adequately
23 protect information the parties are entitled to keep confidential, to ensure that the
24 parties are permitted reasonable necessary uses of such material in preparation for
25 and in the conduct of trial, to address their handling at the end of the litigation, and
26 serve the ends of justice, a protective order for such information is justified in this
27 matter. It is the intent of the parties that information will not be designated as
28 confidential for tactical reasons and that nothing be so designated without a good

1 faith belief that it has been maintained in a confidential, non-public manner, and
2 there is good cause why it should not be part of the public record of this case.

3 2. DEFINITIONS

4 2.1. Action: this pending federal lawsuit, *Sager Electrical Supply*
5 *Company v. Noribachi Corporation et al.*, Case No. 2:18-cv-08291-R-FFM.

6 2.2. Challenging Party: a Party or Non-Party that challenges the
7 designation of information or items under this Order.

8 2.3. “CONFIDENTIAL” Information or Items: information (regardless of
9 how it is generated, stored or maintained) or tangible things that qualify for
10 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
11 the Good Cause Statement.

12 2.4. Counsel: Outside Counsel of Record and House Counsel (as well as
13 their support staff).

14 2.5. Designating Party: a Party or Non-Party that designates information
15 or items that it produces in disclosures or in responses to discovery requests as
16 “CONFIDENTIAL.”

17 2.6. Disclosure or Discovery Material: all items or information, regardless
18 of the medium or manner in which it is generated, stored, or maintained (including,
19 among other things, testimony, transcripts, and tangible things), that are produced
20 or generated in disclosures or responses to discovery in this matter.

21 2.7. Expert: a person with specialized knowledge or experience in a
22 matter pertinent to the litigation who has been retained by a Party or its Counsel to
23 serve as an expert witness or as a consultant in this Action.

24 2.8. House Counsel: attorneys who are employees of a party to this action.
25 House Counsel does not include Outside Counsel of Record or any other outside
26 counsel.

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1 2.9. Non-Party: any natural person, partnership, corporation, association,
2 or other legal entity not named as a Party to this action.

3 2.10. Outside Counsel of Record: attorneys (and support staff) who are not
4 employees of a party to this action but are retained to represent or advise a party to
5 this action and have appeared in this action on behalf of that party or are employed
6 by a law firm which has appeared on behalf of that party.

7 2.11. Party: any party to this Action, including all of its officers, directors,
8 employees, consultants, retained experts, and Outside Counsel of Record (and their
9 support staff).

10 2.12. Producing Party: a Party or Non-Party that produces Disclosure or
11 Discovery Material in this action.

12 2.13. Professional Vendors: persons or entities that provide litigation
13 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
14 demonstrations, and organizing, storing, or retrieving data in any form or medium)
15 and their employees and subcontractors.

16 2.14. Protected Material: any Disclosure or Discovery Material that is
17 designated as “CONFIDENTIAL.”

18 2.15. Receiving Party: a Party that receives Disclosure or Discovery
19 Material from a Producing Party.

20 3. SCOPE

21 3.1. The protections conferred by this Stipulation and Order cover not only
22 Protected Material (as defined above), but also (1) any information copied or
23 extracted from Protected Material; (2) all copies, excerpts, summaries, or
24 compilations of Protected Material; and (3) any testimony, conversations, or
25 presentations by Parties or their Counsel that might reveal Protected Material.
26 However, the protections conferred by this Stipulation and Order do not cover the
27 following information: (a) any information that is in the public domain at the time
28 of disclosure to a Receiving Party or becomes part of the public domain after its

1 disclosure to a Receiving Party as a result of publication not involving a violation
2 of this Order, including becoming part of the public record through trial or
3 otherwise; and (b) any information known to the Receiving Party prior to the
4 disclosure or obtained by the Receiving Party after the disclosure from a source
5 who obtained the information lawfully and under no obligation of confidentiality to
6 the Designating Party.

7 3.2. Nothing in this Protective Order shall prevent or restrict a Producing
8 Party's own disclosure or use of its own Protected Material for any purpose, and
9 nothing in this Order shall preclude any Producing Party from showing its
10 Protected Material to an individual who prepared or was involved in the
11 preparation of the Protected Material.

12 3.3. Any use of Protected Material at trial shall be governed by the orders
13 of the trial judge. This Order does not govern the use of Protected Material at trial.

14 3.4. This Order is without prejudice to the right of any Party to seek
15 further or additional protection of any Discovery Material or to modify this Order
16 in any way, including, without limitation, an order that certain matter not be
17 produced at all.

18 4. **DURATION**

19 Once a case proceeds to trial, information that was designated as
20 CONFIDENTIAL or maintained pursuant to this protective order used or
21 introduced as an exhibit at trial becomes public and will be presumptively
22 available to all members of the public unless compelling reasons supported by
23 specific factual findings to proceed otherwise are made to the trial judge in
24 advance of trial. *See Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause”
25 showing for sealing documents produced in discovery from “compelling reasons”
26 standard when merits-related documents are part of court record). Accordingly,
27 the terms of this protective order do not extend beyond the commencement of trial
28 as to any material that was used or introduced as an exhibit at trial.

1 5. **DESIGNATING PROTECTED MATERIAL**

2 5.1. **Exercise of Restraint and Care in Designating Material for Protection.**

3 Each Party or Non-Party that designates information or items for protection under
4 this Order must take care to limit any such designation to specific material that
5 qualifies under the appropriate standards. The Designating Party must designate
6 for protection only those parts of material, documents, items, or oral or written
7 communications that qualify so that other portions of the material, documents,
8 items, or communications for which protection is not warranted are not swept
9 unjustifiably within the ambit of this Order.

10 Mass, indiscriminate or routinized designations are prohibited. Designations
11 that are shown to be clearly unjustified or that have been made for an improper
12 purpose (e.g., to unnecessarily encumber the case development process or to
13 impose unnecessary expenses and burdens on other parties) may expose the
14 Designating Party to sanctions.

15 If it comes to a Designating Party's attention that information or items that it
16 designated for protection do not qualify for protection at all or do not qualify for
17 the level of protection initially asserted, that Designating Party must promptly
18 notify all other parties that it is withdrawing the inapplicable designation.

19 5.2. **Manner and Timing of Designations.** Except as otherwise provided in
20 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
21 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
22 under this Order must be clearly so designated before the material is disclosed or
23 produced.

24 Designation in conformity with this Order requires:

25 (a) **for information in documentary form** (e.g., paper or electronic
26 documents, but excluding transcripts of depositions or other pretrial or trial
27 proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to
28 each page that contains Protected Material. If only a portion of the material on a

1 page qualifies for protection, the Producing Party must clearly identify the
2 protected portion(s) (e.g., by making appropriate markings in the margins).

3 A Party or Non-Party that makes original documents available for inspection
4 need not designate them for protection until after the inspecting Party has indicated
5 which documents it would like copied and produced. During the inspection and
6 before the designation, all of the material made available for inspection shall be
7 deemed "CONFIDENTIAL." After the inspecting Party has identified the
8 documents it wants copied and produced, the Producing Party must determine
9 which documents, or portions thereof, qualify for protection under this Order.
10 Then, before producing the specified documents, the Producing Party must affix
11 the "CONFIDENTIAL" legend to each page that contains Protected Material. If
12 only a portion of the material on a page qualifies for protection, the Producing
13 Party also must clearly identify the protected portion(s), (e.g., by making
14 appropriate markings in the margins).

15 (b) for testimony given in deposition, that the Designating Party identifies
16 the Disclosure or Discovery Material on the record, before the close of the
17 deposition, all protected testimony.

18 Transcripts containing Protected Material shall have an obvious legend on
19 the title page that the transcript contains Protected Material, and the title page shall
20 be followed by a list of all pages that have been designated as Protected Material
21 and the level of protection being asserted by the Designating Party. The
22 Designating Party shall inform the court reporter of these requirements.

23 (c) for information produced in some form other than documentary and for
24 any other tangible items, that the Producing Party affix in a prominent place on the
25 exterior of the container or containers in which the information or item is stored
26 the legend "CONFIDENTIAL." If only a portion or portions of the information or
27 item warrant protection, the Producing Party, to the extent practicable, shall
28 identify the protected portion(s).

1 5.3. Inadvertent Failures to Designate. An inadvertent failure to designate
2 qualified information or items does not, standing alone, waive the Designating
3 Party's right to secure protection under this Order for such material. Upon
4 correction of a designation, the Receiving Party must make all reasonable efforts to
5 assure that the material is treated in accordance with the provisions of this Order.

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1. Timing of Challenges. Any Party or Non-Party may challenge a
8 designation of confidentiality at any time that is consistent with the Court's
9 Scheduling Order.

10 6.2. Meet and Confer. The Challenging Party shall initiate the dispute
11 resolution process under Local Rule 37-1 et seq.

12 6.3. Joint Stipulation. Any challenge submitted to the Court shall be via a
13 joint stipulation pursuant to Local Rule 37-2.

14 6.4. The burden of persuasion in any such challenge proceeding shall be
15 on the Designating Party. Frivolous challenges and those made for an improper
16 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
17 parties) may expose the Challenging Party to sanctions. Unless the Designating
18 Party has waived the confidentiality designation, all parties shall continue to afford
19 the material in question the level of protection to which it is entitled under the
20 Producing Party's designation until the Court rules on the challenge.

21 7. ACCESS TO AND USE OF PROTECTED MATERIAL

22 7.1. Basic Principles. A Receiving Party may use Protected Material that
23 is disclosed or produced by another Party or by a Non-Party in connection with this
24 case only for prosecuting, defending, or attempting to settle this Action. Such
25 Protected Material may be disclosed only to the categories of persons and under
26 the conditions described in this Order. When the Action has been terminated, a
27 Receiving Party must comply with the provisions of section 13 below (FINAL
28 DISPOSITION).

1 Protected Material must be stored and maintained by a Receiving Party at a
2 location and in a secure manner that ensures that access is limited to the persons
3 authorized under this Order.

4 7.2. Disclosure of “CONFIDENTIAL” Information or Items. Unless
5 otherwise ordered by the Court or permitted in writing by the Designating Party, a
6 Receiving Party may disclose any information or item designated
7 “CONFIDENTIAL” only to:

8 (a) the Receiving Party’s Outside Counsel of Record in this action, as
9 well as employees of said Outside Counsel of Record to whom it is reasonably
10 necessary to disclose the information for this Action;

11 (b) the officers, directors, and employees (including House Counsel) of
12 the Receiving Party to whom disclosure is reasonably necessary for this Action;

13 (c) Experts (as defined in this Order) of the Receiving Party to whom
14 disclosure is reasonably necessary for this Action and who have signed the
15 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

16 (d) the Court and its personnel;

17 (e) court reporters and their staff,

18 (f) professional jury or trial consultants including mock jurors who have
19 signed a confidentiality agreement, and Professional Vendors to whom disclosure
20 is reasonably necessary for this Action and who have signed the “Acknowledgment
21 and Agreement to Be Bound” (Exhibit A);

22 (g) the author or recipient of a document containing the information or a
23 custodian or other person who otherwise possessed or knew the information;

24 (h) during their depositions, witnesses in the Action to whom disclosure
25 is reasonably necessary provided: (1) the deposing party requests that the witness
26 sign the form attached as Exhibit A hereto; and (2) the witness will not be
27 permitted to keep any confidential information unless they sign the
28 “Acknowledgment and Agreement to be Bound” (Exhibit A), unless otherwise

1 agreed by the Designating Party or ordered by the court. Pages of transcribed
2 deposition testimony or exhibits to depositions that reveal Protected Material may
3 be separately bound by the court reporter and may not be disclosed to anyone
4 except as permitted under this Stipulated Protective Order;

5 (i) any mediator or settlement officer, and their supporting personnel,
6 mutually agreed upon by any of the parties engaged in settlement discussions.

7 **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED**
8 **IN OTHER LITIGATION**

9 If a Party is served with a subpoena or a court order issued in other litigation
10 that compels disclosure of any information or items designated in this Action as
11 "CONFIDENTIAL," that Party must:

12 (a) promptly notify in writing the Designating Party. Such notification
13 shall include a copy of the subpoena or court order;

14 (b) promptly notify in writing the party who caused the subpoena or order
15 to issue in the other litigation that some or all of the material covered by the
16 subpoena or order is subject to this Protective Order. Such notification shall
17 include a copy of this Stipulated Protective Order; and

18 (c) cooperate with respect to all reasonable procedures sought to be pursued
19 by the Designating Party whose Protected Material may be affected.

20 If the Designating Party timely seeks a protective order, the Party served
21 with the subpoena or court order shall not produce any information designated in
22 this action as "CONFIDENTIAL" before a determination by the Court from which
23 the subpoena or order issued, unless the Party has obtained the Designating Party's
24 permission. The Designating Party shall bear the burden and expense of seeking
25 protection in that court of its confidential material and nothing in these provisions
26 should be construed as authorizing or encouraging a Receiving Party in this Action
27 to disobey a lawful directive from another court.

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1 9. **A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE**
2 **PRODUCED IN THIS LITIGATION**

3 (a) The terms of this Order are applicable to information produced by a
4 Non-Party in this Action and designated as "CONFIDENTIAL." Such information
5 produced by Non-Parties in connection with this litigation is protected by the
6 remedies and relief provided by this Order. Nothing in these provisions should be
7 construed as prohibiting a Non-Party from seeking additional protections.

8 (b) In the event that a Party is required, by a valid discovery request, to
9 produce a Non-Party's confidential information in its possession, and the Party is
10 subject to an agreement with the Non-Party not to produce the Non-Party's
11 confidential information, then the Party shall:

12 1. promptly notify in writing the Requesting Party and the Non-
13 Party that some or all of the information requested is subject to a confidentiality
14 agreement with a Non-Party; and

15 2. promptly provide the Non-Party with a copy of the Stipulated
16 Protective Order in this Action, the relevant discovery request(s), and a reasonably
17 specific description of the information requested; and

18 3. make the information requested available for inspection by the
19 Non-Party, if requested.

20 (c) If the Non-Party fails to seek a protective order from this court within
21 14 days after receiving the notice and accompanying information, the Producing
22 Party may produce the Non-Party's confidential information responsive to the
23 discovery request. If the Non-Party timely seeks a protective order, the Producing
24 Party shall not produce any information in its possession or control that is subject
25 to the confidentiality agreement with the Non-Party before a determination by the
26 Court. Absent a court order to the contrary, the Non-Party shall bear the burden
27 and expense of seeking protection in this court of its Protected Material.

1 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

2 If a Receiving Party learns that, by inadvertence or otherwise, it has
3 disclosed Protected Material to any person or in any circumstance not authorized
4 under this Stipulated Protective Order, the Receiving Party must immediately (a)
5 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
6 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
7 the person or persons to whom unauthorized disclosures were made of all the terms
8 of this Order, and (d) request such person or persons to execute the
9 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
10 A.

11 11. **INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
12 **PROTECTED MATERIAL**

13 When a Producing Party gives notice to Receiving Parties that certain
14 inadvertently produced material is subject to a claim of privilege or other
15 protection, the obligations of the Receiving Parties are those set forth in Federal
16 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
17 whatever procedure may be established in an e-discovery order that provides for
18 production without prior privilege review. Pursuant to Federal Rule of Evidence
19 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
20 of a communication or information covered by the attorney-client privilege or
21 work product protection, the parties may incorporate their agreement in the
22 stipulated protective order submitted to the court.

23 12. **MISCELLANEOUS**

24 12.1. **Right to Further Relief.** Nothing in this Order abridges the right of
25 any person to seek its modification by the Court in the future.

26 12.2. **Right to Assert Other Objections.** By stipulating to the entry of this
27 Protective Order, no Party waives any right it otherwise would have to object to
28 disclosing or producing any information or item on any ground not addressed in

1 this Stipulated Protective Order. Similarly, no Party waives any right to object on
2 any ground to use in evidence of any of the material covered by this Protective
3 Order.

4 12.3. Filing Protected Material. A Party that seeks to file under seal any
5 Protected Material must comply with Local Civil Rule 79-5. Protected Material
6 may only be filed under seal pursuant to a court order authorizing the sealing of the
7 specific Protected Material at issue. If a Party's request to file Protected Material
8 under seal is denied by the court, then the Receiving Party may file the information
9 in the public record unless otherwise instructed by the court.

10 12.4. Computation of time. The computation of any period of time
11 prescribed or allowed by this Order shall be governed by the provisions for
12 computing time set forth in Federal Rule of Civil Procedure 6.

13 13. FINAL DISPOSITION

14 13.1. Final disposition shall be deemed to be the later of (1) dismissal of all
15 claims and defenses in this Action, with or without prejudice; and (2) final
16 judgment herein after the completion and exhaustion of all appeals, rehearings,
17 remands, trials, or reviews of this action, including the time limits for filing any
18 motions or applications for extension of time pursuant to applicable law and the
19 time limits for filing a petition for writ of certiorari to the Supreme Court of the
20 United States if applicable.

21 13.2. Within 60 days after the final disposition of this action, as defined
22 herein, each Receiving Party must return all Protected Material to the Producing
23 Party or destroy such material. As used in this subdivision, "all Protected
24 Material" includes all copies, abstracts, compilations, summaries, and any other
25 format reproducing or capturing any of the Protected Material. Whether the
26 Protected Material is returned or destroyed, the Receiving Party must submit a
27 written certification to the Producing Party (and, if not the same person or entity, to
28 the Designating Party) by the 60-day deadline that (1) identifies (by category,

1 where appropriate) all the Protected Material that was returned or destroyed and
2 (2) affirms that the Receiving Party has not retained any copies, abstracts,
3 compilations, summaries or any other format reproducing or capturing any of the
4 Protected Material. Notwithstanding this provision, Counsel are entitled to retain
5 an archival copy of all pleadings, motion papers, trial, deposition, and hearing
6 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
7 reports, attorney work product, and consultant and expert work product, even if
8 such materials contain Protected Material. Any such archival copies that contain
9 or constitute Protected Material remain subject to this Protective Order as set forth
10 in Paragraph 4 (DURATION).

11 14. **VIOLATION**

12 Any violation of this Order may be punished by appropriate measures
13 including, without limitation, contempt proceedings and/or monetary sanctions.

15 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

16 DATED: July 19, 2019

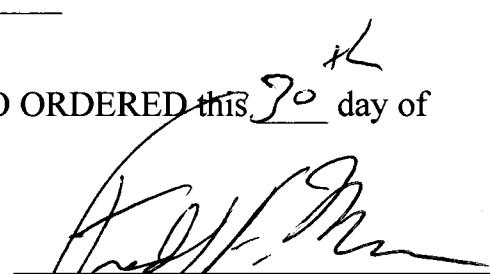
17 /s/ Theodore K. Stream
18 Attorney for Plaintiff

19 DATED: July 16, 2019

21 /s/ Kelly Ann Tran

22 Attorney for Defendant

23 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED this 10 day of
24 July, 2019.

25 
26 FREDERICK F. MUMM
27 United States Magistrate Judge

1
2 EXHIBIT A
3
4 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

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I, [print or type full name], of [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on _____ in the case of *Sager Electrical Supply Company, Inc. vs. Noribachi Corporation, et al.*, Case No. 2:18-cv-08291-R-FFM. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

16 I further agree to submit to the jurisdiction of the United States District Court for the Central District of California – Western Division for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

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20 I hereby appoint [print or type full name] of [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

21 Date: _____

22 City and State were sworn and signed: _____

23 Printed Name: _____

24 Signature: _____

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